

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

In re:

THOMAS SALVADOR MARTINO,
Debtor.

**CASE NO.: 8:14- bk-13452-CPM
Chapter 7**

**FURTHER RESPONSE AND MOTION FOR SUMMARY JUDGMENT
ON TRUSTEE'S OBJECTION TO EXEMPTIONS**

THOMAS SALVADOR MARTINO, (hereinafter "Martino") does hereby file his Further Response and Motion For Summary Judgment as to the Trustee's Amended Objection To Exemptions, and as grounds therefor, states that:

FURTHER RESPONSE

1. On or about April 14, 2015, The Chapter 7 Trustee, Douglas N. Menchise, filed an objection to the Debtor's claims of exemptions. (Doc. No. 41).
2. The scope of the objection is limited to the value of the household goods and furnishings allegedly in excess of the exemptions allowed and the Debtor's claim of TBE ownership of 37.5% of Gold Standard Properties, LLC. The amended objection was filed with the same limits of objection. (Doc. No. 43.)
3. The Debtor filed a Response with a general denial of the Objection. (Doc. No. 47)
4. The Trustee filed a Motion for Summary Judgment.
5. The Debtor accepts the Trustee's explanation of unities necessary to create a tenancy by the entirety in the State of Florida (TBE).

6. Exhibit "A" attached to the Trustee's Motion constitutes the document that serves to assign 37.5% of ownership of Gold Standard Properties, LLC to Thomas Martino and Pamela C. Martino, husband and wife, as tenants by the entirety.

UNDISPUTED FACTS

The Debtor owned 37.5% of Gold Standard Properties, LLC prior to June 2, 2012. Mr. Martino assigned his ownership interest on June 2, 2012 as reflected on Exhibit "A" attached to the Trustee's Motion for Summary Judgment.

Exhibit "A" attached to the Motion states that the assignment is to husband and wife shown as tenants by the entirety. The household furnishings listed on Schedule B filed by the Debtor indicates Tenancy by the Entireties. Furthermore, Schedule C was duly amended to reflect such ownership of the household goods and furnishings as TBE. See copies attached hereto as Composite Exhibit "A" and by reference, made a part hereof.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate if the pleadings and discovery, together with any supporting or opposing affidavits evidence no real issue as to any material fact, and the applicable law supports a judgment. Fed. R. Civ. P. 56 as made applicable by Bankruptcy Rule 7056; Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Mere assertions alone do not establish the existence of a genuine issue of material fact. First Nat. Bank of Ariz. V. Cities Serv. Co., U.S. 253, 289 (1968).

ARGUMENT

The Trustee relies upon the proposition that Mr. Martino's prior ownership of an interest in Gold Standard Properties, LLC before assigning such interest means that the interest of husband and wife did not commence at the same time. Therefore, the requirement of unity in time was not met. The Trustee cites Judge Hyman's decision in In re Aranda, 08-26059-BKC-PGH, 2011 WL 87237, (Bankr. S.D. Fla 2011). The relevant facts in that case reflect that the husband opened a single-party account at a bank. Later, the husband added his wife as co-owner of the account in an effort to create a tenancy by the entirety. Judge Hyman decided that such status of TBE did not exist because the addition of the wife to the account lacks the unity of time. However, adding a spouse to an existing account is different from an assignment to husband and wife. See In re Kossow, 325 B.R. 478, 487 (Bankr. S.D. Fla. 2005). The Kossow case was also decided by Judge Hyman. This case involved personal property owned by the Debtor before marriage. After marrying, the Debtor assigned personal property to himself and his spouse as TBE. The judge agreed that the property transferred by assignment was TBE and exempt from levy by the husband's creditors. See also In re Caliri, 347 B.R. at 798 (Bankr. M.D. Fla 2006), where Judge Briskman recognized that personal property of a debtor can be transferred through an assignment to create ownership as TBE.

As for the objection to the household furnishings and goods, Schedule B specifically states that the ownership of household furnishings is held as tenants by the entirety. Furthermore, Schedule C was duly amended to reflect such ownership exemption.

CONCLUSION

It is quite evident from the Assignment, and the Bankruptcy Schedules that the Debtor and his spouse own their household furnishings and interest in Gold Standard as tenants by the

entirety. The case law supports the fact that TBE can be established where the prior property interest of one of the spouses is conveyed by transfer or assignment to both husband and wife. The courts have recognized the distinction between adding a spouse to an existing account or property interest; and having a separate assignment of property or creating a new TBE account. Therefore, the Trustee's Objection should be overruled and the exemptions allowed.

WHEREFORE, THOMAS SALVADOR MARTINO prays that this Court grant this Motion, overrule the Trustee's Objection to Exemptions and for such other and further relief as is just and proper.

DAVID W. STEEN, P. A.

/s/ David W. Steen

DAVID W. STEEN, ESQUIRE

Florida Bar No.: 221546

602 South Boulevard

Tampa, FL 33606

Telephone: (813) 251-3000

E Mail: dwsteen@dsteenpa.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail and/or electronic mail (CM/ECF) to: United States Trustee, 501 E. Polk St., Ste. 1200, Tampa, Florida 33602; Douglas N. Menchise, Trustee, 2963 Gulf To Bay Blvd., #300, Clearwater, FL 33759; and Chris Kasten, Esquire, BUSH ROSS, P.A., P.O. Box 3913, Tampa, FL 33601-3913 on this 6th day of May, 2015.

/s/ David W. Steen

DAVID W. STEEN, ESQUIRE

Best Case Bankruptcy (12/07)

In re **Thomas Salvador Martino**

Case No. **8:14-bk-13452**

Debtor

SCHEDULE B - PERSONAL PROPERTY - AMENDED

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "X" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petitioner is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
1. Cash on hand		Cash on Hand	-	200.00
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives		Financial Account with Ameriprise (Tenancy by Entirety)	-	0.00
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
Sub-Total - (Total of this page)				200.00

4 continuation sheets attached to the Schedule of Personal Property



Best Case Official Form 9B (12-07) - Cont

In re Thomas Salvador Martino

Case No. 8:14-bk-13452

Debtor

SCHEDULE B - PERSONAL PROPERTY - AMENDED
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
4. Household goods and furnishings, including audio, video, and computer equipment.		Foyer-Bookcase, Wall Mirror, Painting Family Rm-2 Lazy Boy Sofas, Coffee Table, End Table, Wall Unit, 61" Sharp TV, Side Table, Mini Bar Cabinet, Mini Fridge, Wine Rack, Lamp, 3 Paintings, Faux Zebra&Deer Head, Ceiling Fan, Bathroom Sketch Painting Garage-Tools, Baseball bats, Mops, Brooms, Cleaning Supplies, X Mas Decor, Vacuum, Clothes Steamer Kitchen-Glass Table/4 Chairs, GE Refrigerator, Silverware, Glassware, Dinnerware, Pots&Pans, 25" Vizio TV, Candle Holder, Decorative Wall Plates, Ice Bucket, Print Art, Decorative Dish, Religious Iron, 3 Stools, China, Silver Pieces, Crystal Glasses Dining Rm/Living Rm-Dining Room Table/6 Chairs, Side Table, China Cabinet, Sofa, Chair and Ottoman, 2 Side Chairs, Coffee Table, 2 End Tables, Mini Piano (Suzuki), Wall Mirror, Bathroom Sketch Painting, Oriental Rug 5'8", Lamp, Chandelier, Artificial Plant, Cork Side Table, Decorative Vases (2) Guest Bedroom-Ceiling Fan, Lamp, Dresser w six drawers, Side Table, Dresser w 3 drawers, 36" Westinghouse TV Master Bedroom-Toshiba 38" TV, Bed w Footboard and Headboard, 2 End Tables, Dresser w/Mirror, Chester Drawers, Tapestry, Lamp, Bench Hallway -Built In Bookshelf, Frigidaire Affinity Washer, Frigidaire Affinity Dryer, Epson Copy Machine Table Top, Side Table, Books, VCR Movies, XBox (Tenancy by Entirety)	-	4,675.00
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.		Autographed Photo of Danny Wuerffel	-	180.00
6. Wearing apparel.		8 Ties, 2 Belts, 9 pair Shoes, Hat, 4 Suits, 4 Sport Coats	-	70.00
7. Furs and jewelry.		Timex Watch	-	5.00
8. Firearms and sports, photographic, and other hobby equipment.		2 Bikes, Golf Clubs, Guitar, 270 Remington Rifle, Barretta 45 Revolver, Derringer Pistol	-	400.00
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.		Lincoln Mutual Life Insurance Company (\$50,000.00 benefit)	-	5,519.38
Sub-Total > (Total of this page)				10,849.38

Sheet 1 of 4 continuation sheets attached to the Schedule of Personal Property

1903 Judicial Form 9B (12-07) Ex-Cont

In re **Thomas Salvador Martino**

Case No. **8:14-bk-13452**

Debtor

SCHEDULE B - PERSONAL PROPERTY - AMENDED
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
10. Annuities. Itemize and name each issuer.	X			
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c)(1))	X			
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	X			
13. Stock and interests in incorporated and unincorporated businesses. Itemize.		Law Offices of Thomas Martino, P.A. (100%)	-	0.00
		Deville Corp.	-	0.00
		50% Tenants by the Entireties		
		Arrawana LLC (Sole Member)	-	0.00
		Gold Standard Properties LLC - 38 1/2% Tenancy by Entireties	-	0.00
		Wright Martino Partnership (50%) (Tenancy by Entirety)	-	163,862.50
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
Sub-Total >				163,862.50
(Total of this page)				

Sheet **2** of **4** continuation sheets attached to the Schedule of Personal Property

JD-10 (Official Form 970) (12/07) - Cont.

In re: **Thomas Salvador Martino**

Case No. **8:14-bk-13452**

Debtor

SCHEDULE B - PERSONAL PROPERTY - AMENDED
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(11A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.		2010 Buick 4D Lacross Vin No. 1G4GC5EG1AF206916 (no equity)	-	10,000.00
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			
29. Machinery, fixtures, equipment, and supplies used in business.	X			
30. Inventory.	X			
31. Animals.	X			
Sub-Total:				10,000.00
(Total of this page)				

Sheet **3** of **4** continuation sheets attached to the Schedule of Personal Property.

BK-10 Official Form 6B (12/07) - Cont

In re Thomas Salvador Martino

Case No. 8:14-bk-13452

Debtor

SCHEDULE B - PERSONAL PROPERTY - AMENDED
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
32. Crops - growing or harvested. Give particulars.	<input checked="" type="checkbox"/>			
33. Farming equipment and implements.	<input checked="" type="checkbox"/>			
34. Farm supplies, chemicals, and feed.	<input checked="" type="checkbox"/>			
35. Other personal property of any kind not already listed. Itemize.	<input checked="" type="checkbox"/>			

Sub-Total = 0.00
(Total of this page)
Total = 184,911.88

(Report also on Summary of Schedules)

Sheet 4 of 4 continuation sheets attached
to the Schedule of Personal Property

U.S. Bankruptcy Court, E.D. FL

In re: Thomas Salvador Martino

Case No. 8:14-bk-13452

Debtor

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT - AMENDED

Debtor claims the exemptions to which debtor is entitled under:
if check one box

- ☐ 11 U.S.C. § 522(b)(2)
☒ 11 U.S.C. § 522(b)(3)

☐ Check if debtor claims a homestead exemption that exceeds \$155,675, a property subject to adjustment under 11 U.S.C. § 541(c)(2) with respect to assets constituting a homestead (see 11 U.S.C. § 541(c)(2)).

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Value of Property Without Deducting Exemption
Real Property 114 East Davis Blvd. #3 Tampa, FL 33605 (Tenancy by Entirety)	Fla. Const. art. X, § 4(a)(1); Fla. Stat. Ann. §§ 222.01 & 222.02	50,453.16	450,000.00
Checking, Savings, or Other Financial Accounts, Certificates of Deposit Financial Account with Ameriprise (Tenancy by Entirety)	11 U.S.C. § 522(b)(3)(B)	0.00	0.00
Household Goods and Furnishings Foyer-Bookcase, Wall Mirror, Painting Family Rm-2 Lazy Boy Sofas, Coffee Table, End Table, Wall Unit, 61" Sharp TV, Side Table, Mini Bar Cabinet, Mini Fridge, Wine Rack, Lamp, 3 Paintings, Faux Zebra&Deer Head, Ceiling Fan, Bathroom Sketch Painting Garage-Tools, Baseball bats, Mops, Brooms, Cleaning Supplies, X Mas Decor, Vacuum, Clothes Steamer Kitchen-Glass Table/4 Chairs, GE Refrigerator, Silverware, Glassware, Dinnerware, Pots&Pans, 25" Vizio TV, Candle Holder, Decorative Wall Plates, Ice Bucket, Print Art, Decorative Dish, Religious Iron, 3 Stools, China, Silver Pieces, Crystal Glasses Dining Rm/Living Rm-Dining Room Table/6 Chairs, Side Table, China Cabinet, Sofa, Chair and Ottoman, 2 Side Chairs, Coffee Table, 2 End Tables, Mini Piano (Suzuki), Wall Mirror, Bathroom Sketch Painting, Oriental Rug 5'8", Lamp, Chandelier, Artificial Plant, Cork Side Table, Decorative Vases (2) Guest Bedroom-Ceiling Fan, Lamp, Dresser w six drawers, Side Table, Dresser w 3 drawers, 36" Westinghouse TV Master Bedroom-Toshiba 38" TV, Bed w Footboard and Headboard, 2 End Tables, Dresser w/Mirror, Chester Drawers, Tapestry, Lamp, Bench Hallway -Built In Bookshelf, Frigidaire Affinity Washer, Frigidaire Affinity Dryer, Epson Copy Machine Table Top, Side Table, Books, VCR Movies, Xbox (Tenancy by Entirety)	Fla. Stat. Ann. § 222.25(4) 11 U.S.C. § 522(b)(3)(B)	4,000.00 675.00	4,675.00
Books, Pictures and Other Art Objects; Collectibles Autographed Photo of Danny Wuerffel	Fla. Const. art. X, § 4(a)(2)	180.00	180.00
Wearing Apparel 8 Ties, 2 Belts, 9 pair Shoes, Hat, 4 Suits, 4 Sport Coats	Fla. Const. art. X, § 4(a)(2)	70.00	70.00

In re: Thomas Salvador Martino

Debtor

(Continuation Sheet)

Furs and Jewelry

Timex Watch

Fla. Const. art. X, § 4(a)(2)

5.00

5.00

Firearms and Sports, Photographic and Other Hobby Equipment

2 Bikes, Golf Clubs, Guitar, 270 Remington Rifle, Barretta 45 Revolver, Dorringer Pistol

Fla. Const. art. X, § 4(a)(2)

400.00

400.00

Interests in Insurance Policies

Lincoln Mutual Life Insurance Company
(\$50,000.00 benefit)

Fla. Stat. Ann. § 222.13

5,519.38

5,519.38

Stock and Interests in Businesses

Deville Corp.
50% Tenants by the Entireties

11 U.S.C. § 522(b)(3)(B)

0.00

0.00

Arrawana LLC (Sole Member)

Fla. Const. art. X, § 4(a)(2)

0.00

0.00

Gold Standard Properties LLC - 38 1/2%
Tenancy by Entireties

11 U.S.C. § 522(b)(3)(B)

0.00

0.00

Wright Martino Partnership (50%) (Tenancy by Entirety)

11 U.S.C. § 522(b)(3)(B)

0.00

163,862.50

Automobiles, Trucks, Trailers, and Other Vehicles

2010 Buick 4D Lacross
Vin No. 1G4GC5EG1AF206916 (no equity)

Fla. Stat. Ann. § 222.25(1)

0.00

10.000.00

Results

61.302,54

634,711.88

10616 Declaration (2) (with L- and S- Declaration) (12/05)

United States Bankruptcy Court
Middle District of Florida

In re: Thomas Salvador Martino

Debtor(s)

Case No. 8:14-bk-13452

Chapter 7


DECLARATION CONCERNING DEBTOR'S SCHEDULES - AMENDED

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare, under penalty of perjury, that I have read the foregoing summary and schedules, consisting of 3 sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date: 4-21-15

Signature


Thomas Salvador Martino
Debtor

(Penalty for making a false statement or failing to comply with the law: Fines of up to \$750,000 or imprisonment for up to 5 years or both, 18 U.S.C. §§ 152 and 157.)